IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.752 OF 2005
IN
SECOND APPEAL st.NO.9173 OF 2005

Smt. Dropadi Bhujanga Varape & Ors. ..Applicants
Versus
Demanna Subrao Patil ..Respondent

Mr.A.S.Kapse for applicants
Mr.P.D.Dalvi for respondent

CORAM : P.V.KAKADE, J.

DATE : 7TH OCTOBER, 2005

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

. Leave to amend.

2. This is an application for condonation of delay of five years and 23 days in preferring Second Appeal against the judgment and order passed by the lower appellate court.

. The application is made with submission that

after the judgment and order passed by the lower appellate court the appellant was under instructions from his advocate and all the papers and record were handed over to the concerned advocate, who is named in the application, the said advocate assured him that all the steps would be taken on receipt of the said record, which were handed over to him. Thereafter he went to his village. The concerned advocate is from Thana where as the applicant is resident of Dukkarwadi, Tal. Chandgad Dist. Kolhapur. There was no communication thereafter from the concerned advocate and he came to know about the progress of the proceeding when Darkhast Application No.21/2004 was filed and notice thereof dated 16.10.2004 was served upon him and thereafter he rushed to the concerned advocate to know about this position, but the concerned advocate was not in a position to give any explanation and hence the delay was caused in preferring the Second Appeal. On last date it was submitted on behalf of the applicants that the advocate who was looking after the applicants matter in the lower court would vouch for the said contention and therefore, the applicants were directed to file affidavit of the advocate appearing for the applicants in the lower court. However, it appears that the said

advocate refused to file any affidavit and therefore, this court asked the applicants to file affidavit to that effect. Accordingly, affidavit has come on record, clearly stating the terms that the concerned advocate in the lower court had refused to file his affidavit in support of his contention.

. The learned counsel for the opponent vehemently opposed this application. He has also filed his affidavit in reply wherein the contentions made by the applicants are stated to be false. The learned counsel for the opponent sought to place reliance on the Apex Court ruling in the case of **P.K.Ramchandran vs. State of Kerala reported in 1998 AIR SC 2276** wherein it was held that the delay condoned without recording satisfaction of reasonable or satisfactory explanation for inordinate delay would not be acceptable and such delay is not condonable. The facts however, involved in the said case before the apex court were quite different wherein the State had filed affidavit that the office of the Advocate General was busy with some important matters and therefore, the delay was caused. This is not the case in the present set of fact. Here the lapse on the part of advocate is quite clear and therefore, in

my view, party especially who comes from very remote place of the State should not suffer.

3. In the circumstances, I am inclined to accept the plea of the applicant and therefore, the application is made absolute in terms of prayer clause (a) on condition that the cost of Rs.5000/= shall be paid out of which amount of Rs.3000/= shall be donated to the State Legal Authority and remaining amount of Rs.2000/= shall be paid to the Respondent within four weeks from the date of this order. With this direction the application stands disposed of with no order as to costs.